

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,)	
)	
)	
Plaintiff,)	
)	
v.)	No. 4:16-CV-469-K
)	
ERIC TRADD SCHNEIDERMAN,)	
Attorney General of New York, in his official)	
capacity, and MAURA TRACY HEALEY,)	
Attorney General of Massachusetts, in her)	
official capacity,)	
)	
Defendants.)	
)	

**REPLY IN SUPPORT OF ATTORNEY GENERAL HEALEY’S
MOTION FOR A STAY PENDING APPELLATE REVIEW**

The Court should grant Attorney General Healey’s well-founded motion (Doc. No. 140; “Motion”) seeking a stay of all discovery pending appellate review of the Jurisdictional Discovery Order (Doc. No. 73) and the Deposition Order (Doc. No. 117) by the U.S. Court of Appeals for the Fifth Circuit.

In its response, Exxon Mobil Corporation (“Exxon”) flatly ignores the substantial case law supporting mandamus as an appropriate appellate remedy under these circumstances. As set forth in the Motion, a stay is warranted because Attorney General Healey’s petition for relief from the Fifth Circuit is likely to succeed under that court’s decisions holding that mandamus is warranted where an improper deposition of a high-ranking official is ordered. *In re FDIC*, 58 F.3d 1055, 1060 (5th Cir. 1995); *In re Office of Inspector General*, 933 F.2d 276, 277-78 (5th Cir. 1991); *see also* cases cited in Memorandum of Law in Support of Motion to Vacate Order for Deposition of Attorney General Healey and Stay Discovery, and for a Protective Order (Doc.

No. 121) at 10 n.10.

Moreover, Exxon has provided *no* reason why its interests will be harmed during a stay because there is no risk that it will be required to comply with Attorney General Healey's Civil Investigative Demand until the final resolution of Exxon's lawsuits against it, including this one. By contrast, as the Motion points out, Exxon continues to comply with the similar subpoena issued by the New York Attorney General (notwithstanding his addition to this lawsuit) and has filed no motion in this case to enjoin enforcement of that subpoena, which is ongoing before a New York state court.

At every turn, the Attorney General has promptly and respectfully sought relief from this Court's orders to protect her legal and constitutional rights, and the Court has denied that relief. With due comity to the highest law enforcement official of a sovereign state, the Court should not subject Attorney General Healey to the risk of a contempt citation while she seeks to vindicate her legal rights before a higher court. *See In re FDIC*, 58 F.3d at 1060 n.7. There is no apparent reason why discovery should happen—or the Attorney General should be compelled to fly to Texas on the arbitrary date of December 13—while the Fifth Circuit considers her arguments against those outcomes. Especially where the Fifth Circuit has in the past granted mandamus relief on similar facts, the only fair course is for the Court to grant Attorney General's motion for a stay of the Court's discovery orders pending appellate review.

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL OF
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Dated: December 8, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 8, 2016, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system. Any other counsel of record will be served in accordance with the Federal Rules of Civil Procedure.

s/ Douglas A. Cawley
Douglas A. Cawley